

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to subsidized guardianship program and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 204, “Subsidized Guardianship Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 234.

State or Federal Law Implemented

This rule making implements, in whole or in part, 45 CFR 1356.21 (Foster Care Maintenance Payments and Assistance Program), 42 U.S.C. 672 (Foster Care Maintenance Payments Program), and 42 U.S.C. 673 (Adoption and Guardianship Assistance Program).

Purpose and Summary

Current rules are proposed to be amended to lower the age for subsidized guardianship payments from 14 to 10 years of age. Rules are also proposed to be amended to provide for the extension of guardianship subsidies until the youth reaches age 21 under certain limited circumstances. A child who has a diagnosis of intellectual, mental or medical disability or who has not graduated from high school will be able to continue the subsidy until age 21.

Under the proposed amendments, there will no longer be an age distinction for younger siblings to be eligible for subsidized guardianship payments when those siblings reside in the same home as a child who meets eligibility requirements.

The proposed amendments will allow Department staff to suspend subsidized guardianship payments under certain conditions. The amendments specify when and how such suspensions would occur.

Additionally, minor changes have been proposed to improve the clarity of the rules.

Fiscal Impact

There will be a fiscal impact resulting from the lowering of the age requirement from 14 to 10 years of age. This should be offset by the additional IV-E dollars collected for payment and the exit of children from the foster care system. There will also be a financial impact resulting from allowing children to receive the subsidized guardianship payment until completion of high school. State dollars will be used to cover these costs. Based on data provided, the Department estimates a new cost of \$151,356 annually to serve 24 children on average per month. The Department realizes that costs for the program will rise by the number cited above. However, the Department also notes these costs would have been realized in either adoption or foster care. Due to this consideration, the impact of these costs will be minimal, if there is any impact at all to the overall Child Welfare budget.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 30, 2021. Comments should be directed to:

Nancy Freudenberg
Iowa Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule ~~441—204.1(234)~~, definitions of “Child” and “Sibling group,” as follows:

“Child” means a person who has not attained the age of 18: either a person less than 18 years of age or a person 18, 19, or 20 years of age who meets one or more of the following conditions:

1. Is in full-time attendance at an accredited school pursuing a course of study leading to a high school diploma.
2. Is attending an instructional program leading to a high school equivalency diploma.
3. Has been identified by the director of special education of the area education agency as a child requiring special education as defined in Iowa Code section 256B.2(1).

“Sibling group” means at least two children who are whole or half-siblings. A sibling group may include adopted children who have a common parent. ~~Stepsiblings are not included as part of the sibling group.~~

ITEM 2. Amend subrule 204.2(1) as follows:

204.2(1) General conditions of eligibility. The guardian named in a permanency order under Iowa Code section 232.104(2) “d”(1) or Iowa Code chapter 633 for a child who was previously in the custody of the department is eligible for subsidy when all of the following conditions exist:

- a. No change.
- b. The child is either:
 - (1) ~~44~~ Ten years of age or older and consents to the guardianship; or
 - (2) ~~No younger than 12 years of age and part~~ Part of a sibling group with a child aged ~~44~~ ten or older.
- c. and d. No change.
- e. ~~A child 12 years of age or older and who is~~ part of a sibling group with a child 44 ten years of age or older may be eligible for subsidy if all criteria are met. The following conditions for the younger sibling shall also be met:

(1) and (2) No change.

ITEM 3. Amend subrule 204.3(5) as follows:

204.3(5) *Determination of eligibility after age 18.* The department shall review the subsidy agreement when the child reaches the age of 17½ to determine whether the child is eligible to receive subsidy to the age of 21 to complete high school or equivalency or due to the child's physical, intellectual, or mental health disability.

a. and b. No change.

c. Documentation of the child's diagnosed disability shall be provided by the child's parents guardian to the department to make the determination of continued eligibility to the age of 21.

d. Upon the child's reaching the age of 18, the subsidy may continue until the child completes courses leading to a high school diploma or equivalency or reaches the age of 21. Documentation of school enrollment and completion shall be provided by the child's guardian.

ITEM 4. Amend rule 441—204.5(234) as follows:

441—204.5(234) Parental liability. These subsidy payments are considered foster care payments for purposes of child support recovery and as such create a support debt for the legally responsible parent or parents.

ITEM 5. Renumber rules **441—204.6(234)** to **441—204.9(234)** as **441—204.7(234)** to **441—204.10(234)**.

ITEM 6. Adopt the following new rule 441—204.6(234):

441—204.6(234) Determination of ongoing subsidy eligibility and suspension of subsidy payments.

204.6(1) Eligibility for continuation of guardianship subsidy shall be evaluated when the department has good cause to suspect the guardian is not providing financial support, or is no longer legally responsible for the child. Good cause includes, but is not limited to, the following circumstances:

- a. The child is placed in out-of-home care under Iowa Code chapter 232.
- b. A person alleges the guardian is not providing financial support to the child.
- c. A person other than the guardian is awarded legal custody of the child.
- d. A person other than the guardian is appointed as the guardian of the child.
- e. The child has applied for food assistance or other benefits.
- f. The child has not resided with the guardian for the past 30 consecutive days.
- g. The guardian is incarcerated.
- h. The guardian is awaiting trial for criminal charges related to harm caused to a child in the home.

204.6(2) The department shall contact the child's guardian via letter, telephone, or electronic or other means and document such efforts if an evaluation is determined to be necessary.

204.6(3) If such an evaluation occurs, the child's guardian shall provide documentation of support, including receipts, to the department upon request.

204.6(4) Upon completion of the department's evaluation of the child's continued eligibility for guardianship subsidy, the department shall issue a written notice to the guardian documenting required ongoing actions by the guardian, including an expectation of continued cooperation by the guardian to provide documentation of ongoing support to the child at the request of the department.

204.6(5) The department shall suspend guardianship subsidy payments if the guardian refuses to cooperate with any department evaluation designed to determine legal responsibility for the child or to determine whether the guardian is providing financial support for the child.

204.6(6) In the event the evaluation has determined the guardianship subsidy payment will be suspended, modified, or terminated, the department shall notify the guardian with proper notice, using Notice of Decision Form 470-5613.

204.6(7) When the child has resided out of the guardian's home for 30 consecutive days, the department shall request a renegotiation of the Guardianship Subsidy Agreement with the guardian to reduce or suspend payments as agreed to by the guardian.

ITEM 7. Amend renumbered rule 441—204.7(234) as follows:

441—204.7(234) Termination of subsidy. A Guardianship Subsidy Agreement shall remain in effect until the subsidy is terminated based on one of the grounds listed in this rule. The subsidy shall terminate when any of the following occur, and a notice shall be sent which states the reason for the termination:

1. The child reaches the age of 18, unless the department determines that the subsidy may continue until the child reaches the age of ~~19~~ 21 to facilitate the child's completion of high school or a high school equivalency diploma.

2. to 10. No change.